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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/334,415	06/16/1999	CLAUDE BASSO	FR9-98-048	5316
24267	7590	10/28/2005	EXAMINER	
CESARI AND MCKENNA, LLP 88 BLACK FALCON AVENUE BOSTON, MA 02210			JAGANNATHAN, MELANIE	
			ART UNIT	PAPER NUMBER
			2666	

DATE MAILED: 10/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/334,415

Applicant(s)

BASSO ET AL.

Examiner

Melanie Jagannathan

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 July 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-5 and 7-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-5 and 7-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

- A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on July 21, 2004 has been entered.
- Claims 1,3-5, 7-25 are pending.

Claim Objections

1. Claims **1, 3-5** are objected to because of the following informalities: reference numbers of elements as well as Figure indications in claims should be deleted. Appropriate correction is required.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein

were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

3. Claims **1, 3, 5, 7-10, 12-15, 17-20, 22, 23** are rejected under 35 U.S.C. 103(a) as being unpatentable over Hjalmtysson et al U.S. 6,128,305 in view of VanDervort US 5,812,528.

Regarding claims **1,14,19**, the claimed source node and destination node are anticipated by calling station (Figure 9, element 901) and called station (Figure 9, element 910). The claimed initiation of connection procedure through call setup message sent by source node to destination node and destination node sending back an acknowledgment message to source node is anticipated by calling station sending setup message (Figure 9, SETUP) to called station and called station sending back acknowledgment message (Figure 9, ACK) to calling station.

The claimed sending of stream to destination node after receiving acknowledgment message and sending of stream back after receiving stream to check characteristics of connection established between source node and destination node is anticipated by calling station sending quality of service message (Figure 9, QoS REQUEST), called station sending back quality of service commit message (QoS COMMIT) back, and calling station sending back acknowledgment message (QoS ACK)

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all in order to set up quality of service for connection after initial connection has been established.

Hjalmtysson et al. does not explicitly disclose verification and response data streams.

*anticipated by
the test data?*

Instant application discloses on page 8 the verification and response data streams could be used to calculate end-to-end transit delay using the times the streams are sent and received. VanDervort discloses measuring round trip time by introducing test cell into ATM network. A test instrument (Figure 5, element 59) connected to an associated node, includes test processor (element 60) which injects test cells into network. The test cells are looped-back by a similar test instrument in a distant node to the node that sent cell. The test cells include a time of departure time stamp and a time of arrival time stamp is appended to cell after it has been looped back to transmitting test instrument. The round trip time is computed as the time of departure subtracted from time of arrival. See column 14, lines 42-65.

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to modify Hjalmtysson et al. with test cells of VanDervort. One of ordinary skill in the art would be motivated to do so to fairly distribute available network bandwidth to connections, to accurately evaluate congestion. See column 5, lines 14-17, lines 31-36, column 8, lines 46-49.

Regarding claims 5, 9, the claimed method in ATM network comprising source node and destination node are anticipated by calling station (Figure 9, element 901) and called station (Figure 9, element 910). The claimed sending of call setup message

source node to destination node and destination node sending back an acknowledgment message to source node when connection has been successfully established is anticipated by calling station sending setup message (Figure 9, SETUP) to called station and called station sending back acknowledgment message (Figure 9, ACK) to calling station.

The claimed sending of stream to destination node after receiving acknowledgment message and sending of stream back after receiving stream to check characteristics of connection established between source node and destination node is anticipated by calling station sending quality of service message (Figure 9, QoS REQUEST), called station sending back quality of service commit message (QoS COMMIT) back, and calling station sending back acknowledgment message (QoS ACK) all in order to set up quality of service for connection after initial connection has been established.

Hjalmtysson et al. does not explicitly disclose verification and response data streams.

Instant application discloses on page 8 the verification and response data streams could be used to calculate end-to-end transit delay using the times the streams are sent and received. VanDervort discloses measuring round trip time by introducing test cell into ATM network. A test instrument (Figure 5, element 59) connected to an associated node, includes test processor (element 60) which injects test cells into network. The test cells are looped-back by a similar test instrument in a distant node to the node that sent cell. The test cells include a time of departure time stamp and a time

of arrival time stamp is appended to cell after it has been looped back to transmitting test instrument. The round trip time is computed as the time of departure subtracted from time of arrival. See column 14, lines 42-65.

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to modify Hjalmtysson et al. with test cells of VanDervort. One of ordinary skill in the art would be motivated to do so to fairly distribute available network bandwidth to connections, to accurately evaluate congestion. See column 5, lines 14-17, lines 31-36, column 8, lines 46-49.

Regarding claim **3,10,15,20**, the claimed asynchronous connection-oriented transmission network being ATM network is anticipated by establishment of connection in ATM network. See column 1, lines 16-20.

Regarding claim **7,12,17,22**, Hjalmtysson et al. discloses all of the limitations of the claims except for the claimed verification and response data stream used to check end-to-end transit delay of connection. VanDervort discloses measuring round trip time by introducing test cell into ATM network. A test instrument (Figure 5, element 59) connected to an associated node, includes test processor (element 60) which injects test cells into network. The test cells are looped-back by a similar test instrument in a distant node to the node that sent cell. The test cells include a time of departure time stamp and a time of arrival time stamp is appended to cell after it has been looped back to transmitting test instrument. The round trip time is computed as the time of departure subtracted from time of arrival. See column 14, lines 42-65.

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to modify Hjalmtysson et al. with test cells of VanDervort. One of ordinary skill in the art would be motivated to do so to fairly distribute available network bandwidth to connections, to accurately evaluate congestion. See column 5, lines 14-17, lines 31-36, column 8, lines 46-49.

Regarding claim **8,13,18,23**, the claimed check bandwidth allocation is anticipated by QoS request and QoS commit messages sent to set up quality of service needed for connection which includes bandwidth allocation. See column 9, lines 40-67 and column 10, lines 1-9.

4. Claims **4,11,16,21** are rejected under 35 U.S.C. 103(a) as being unpatentable over Hjalmtysson et al. in view of VanDervort in further view of Kelley et al. US 6,147,998. Hjalmtysson et al. and VanDervort disclose all the limitations of the claim except for use of frame relay network.

Kelley et al. discloses inserting test cells into a data stream over a communications link to determine quality of service in a frame-relay network. See column 4, lines 6-15, lines 43-48. At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to modify Hjalmtysson et al. and VanDervort to use a frame relay network as in Kelley et al. One of ordinary skill in the art would be motivated to do this to measure quality of service parameters for frame relay networks. See column 3, lines 14-22.

Response to Arguments

5. Applicant's arguments with respect to claims 1,3-5,7-25 have been considered but are moot in view of the new ground(s) of rejection.

Applicant argues reference Hjalmtysson does not disclose sending a verification data stream and sending a response data stream. Examiner submits new reference VanDervort as part of new grounds of rejection.


Conclusion


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melanie Jagannathan whose telephone number is 571-272-3163. The examiner can normally be reached on Monday-Friday from 8:00 a.m.-4:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Seema Rao can be reached on 571-272-3174. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MJ 
10/18/05


DANIEL J. HARRIS
PATENT ATTORNEY